



Association for Local Telecommunications Services

CC Docket No 96-98

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VICE PRESIDENT &
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EX PARTE OR LATE FILED

February 4, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. Ken Moran
Chief, Accounting and Audits Division
Federal Communications Commission
2000 L St., NW, Room 812
Washington, D.C. 20554

Re: SBC's Letter of January 20, 1998, Concerning Separations Treatment of Local Calls to ISPs; Request for Expedited Letter Clarification--Inclusion of Local Calls to ISPs Within Reciprocal Compensation Agreements, CCB/CPD 97-30

Dear Mr. Moran:

I have recently obtained a copy of the January 20th letter addressed to you from Ms. Jeannie Fry of SBC indicating that SBC intends to "jurisdictionally reclassify" local calls to ISPs as interstate in its jurisdictional separations data. I would like to inform you of important facts and issues not addressed in SBC's letter, and strongly request that you issue an RAO letter directing SBC and all other ILECs not to alter their current separations treatment of this traffic. In light of the Commission's clear directions on this matter, which are discussed below, I urge that your RAO letter direct all companies that have already implemented the unauthorized separations changes sought by SBC to identify themselves, and to immediately submit corrected data.

Perhaps the most immediate fact that goes unmentioned in SBC's letter is that the Commission has long recognized and relied upon the treatment of this traffic in separations data as intrastate. See, e.g., Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 4 FCC Rcd 3983, 3987-88 (1989):

"ESP traffic over local business lines is classified as local traffic for separations purposes, with the result that TS costs associated with ESP

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traffic are apportioned to the intrastate jurisdiction,* and are recovered through intrastate charges paid by ESPs and other purchasers of intrastate services.

* See, e.g., 47 C.F.R. §36.125."

Given the Commission's long-standing reliance upon the intrastate treatment of this traffic, the appreciable jurisdictional disruption that SBC's proposed reallocation would produce, and the attendant chaos in downstream utilization of this traffic data by various processes and procedures, SBC should not be allowed to unilaterally change this procedure. The only reason SBC now seeks to reclassify the treatment of this separations data is to provide support for its effort to avoid paying reciprocal compensation for calls made to ISPs.

By way of background, SBC's proposed separations changes are part of the ILECs' attempt to avoid paying reciprocal compensation to CLECs for local calls made to ISPs. No ILEC claimed this traffic was not subject to reciprocal compensation when they originally negotiated reciprocal compensation agreements with the CLECs (indeed, Bell Atlantic expressly pointed to this traffic as being subject to reciprocal compensation in its Reply Comments filed May 30, 1996, in CC Docket No. 96-98 at 21). However, once the ILECs realized that the balance of ISP local calls were flowing to CLECs rather than to themselves, they immediately adopted a new theory -- that local calls to ISPs are actually interstate because the ISPs assertedly re-transmit such calls outside the state, thereby precluding them from being treated as local for the purposes of reciprocal compensation.

Indeed, the ILECs recently argued this claim to the Eighth Circuit as a ground for reversing the Commission's Access Charge Reform Order (see Brief for Bell Atlantic and Ameritech filed October 28, 1997, in SBC v. FCC, No. 97-2618 and consolidated cases at pp. 9-17). While I do not have a transcript of the argument, my recollection is that counsel for the Commission informed the Court that, even assuming an ISP's subsequent handling of the inbound call were jurisdictionally relevant, the ILECs are not factually correct that all inbound calls are ultimately linked to end points located outside the state because some calls require only a link to a local server, or to servers located within the same state.

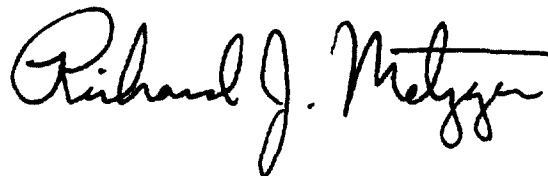
Concerning the ILECs' reciprocal compensation claim, ALTS has requested that the Common Carrier Bureau clarify its long-standing requirement that calls to ISPs be treated as local for compensation purposes, and make it clear that this rule

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applies to wholesale arrangements among carriers as well as to the retail prices paid by end users (No. CCB/CPD 97-30). In support of this request, ALTS has pointed out that ILECs treat such calls as local in their rate cases, ARMIS reports, separations submissions, and in reciprocal compensation agreements with adjacent ILECs. Of the eleven states that have issued final decisions concerning this matter, all eleven have agreed that such traffic is governed by reciprocal compensation agreements. Numerous state proceedings involving this issue are currently underway, and NARUC has concurred with ALTS on this matter in a resolution adopted this Fall. The pendency of this issue before several state forums is an additional and important reason why SBC should not be allowed to make any unilateral and unfounded changes in the separations treatment of this traffic.

Based on these facts, I urge that you stop SBC or any other ILEC from making any unilateral changes in its separations treatment of this traffic by promptly issuing an RAO letter. Please let me know if I can answer any questions concerning this important matter.

Sincerely yours,



cc: J. Ingle
R. Metzger
R. Milkman
J. Nakahata
J. Schlichting
E. Krachmer
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M. Kellogg - SBC
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